

JS 44 (Rev. 2/08)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

## I. (a) PLAINTIFFS

ERNEST EVANS, THE LAST TWIST INC. &  
THE ERNEST EVANS COMPANY

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Willie E. Gary, Esq./Gary, Williams, Parenti, Watson & Gary, P.L.  
221 S.E. Osceola Street  
Stuart, Florida 34994

## DEFENDANTS

HEWLETT PACKARD COMPANY & PALM, INC.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT  
LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☒ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE  
HIGHLANDS

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO

(See instructions second page):

JUDGE

DOCKET NUMBER

## VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Trademark Act of 1946, as amended, 15 U.S.C. §1501 et seq.,

LENGTH OF TRIAL via 14 days estimated (for both sides to try entire case)

## VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

February 11, 2013

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

IFP

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States District Courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION

ERNEST EVANS, an Individual and  
THE LAST TWIST INC.,  
a Pennsylvania for Profit Company and  
THE ERNEST EVANS CORPORATION,  
a Pennsylvania for Profit Company

Plaintiffs,

Case No.:

Judge:

vs.

HEWLETT-PACKARD COMPANY,  
a Delaware for Profit Company and  
PALM, Inc,  
a Delaware for Profit Company

DEMAND FOR JURY TRIAL

Defendant.

COMPLAINT

COMES NOW Plaintiff ERNEST EVANS, an Individual, (hereinafter "Mr. Evans") The LAST TWIST, INC., a Pennsylvania For Profit Corporation and The ERNEST EVANS CORPORATION, a Pennsylvania For Profit Corporation (hereinafter collectively "Evans Enterprise") brings this law suit by and through the undersigned attorneys against HEWLETT PACKARD COMPANY pursuant to trademark infringement, dilution, false designation of origin, unfair competition and deceptive trade practices arising under the Trademark Act of 1946, as amended, 15 U.S.C. §1501 et seq. and the statutory and common laws of the Commonwealth of Pennsylvania, including but not limited to the Unauthorized use of Name and Likeness, under 42 Pa.C.S. § 8316 and in support thereof states as follows:

PARTIES

1. Plaintiff, Ernest Evans, is a citizen of the Commonwealth of Pennsylvania, residing therein in the City of Conshohocken. Mr. Evans is more likely recognized by his stage name, Chubby Checker.

Chubby Checker Complaint  
Gary, Williams, Parenti, Watson & Gary, P.L. \*221 S.E. Osceola Street\* Stuart, Florida 34994  
\*weg@williegary.com & aphidd@williegary.com

2. Plaintiff, The Last Twist, Inc. is a corporation of the Commonwealth of Pennsylvania, with a principal place of business at 320 Fayette Street, 2<sup>nd</sup> Floor, Conshohocken, Pennsylvania 19428.
3. Plaintiff, The Ernest Evans Corporation, is a corporation of the Commonwealth of Pennsylvania, with a principal place of business at 320 Fayette Street, 2<sup>nd</sup> Floor, Conshohocken, Pennsylvania 19428.
4. Upon information and belief, Defendant Hewlett-Packard Company (hereinafter "HP") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 3000 Hanover Street, Palo Alto, California 94304.
5. Upon information and belief, Defendant Palm Inc. (hereinafter "Palm") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 950 W. Maude Ave, Sunnyvale, California 94085.
6. Upon information and belief, Defendant Palm is a wholly owned subsidiary of Defendant HP.
7. Upon information and belief, Defendant HP regularly engages in business throughout the Commonwealth of Pennsylvania and in the county of Philadelphia and its contiguous counties.
8. Upon information and belief, Defendant Palm regularly engages in business throughout the Commonwealth of Pennsylvania, Florida and the entire United States.

#### **JURISDICTION**

9. This Court has jurisdiction over this action under 15 U.S.C. §1121 and 28 U.S.C. § 1338 (a), because this case arises under the Trademark Act of 1946, as amended, 15 U.S.C. §§1051 et seq.
10. This Court also has jurisdiction over this action under 28 U.S.C. §1332, as there is diversity of citizenship between Plaintiffs Pennsylvania residents and citizen, and Defendants citizens of Delaware. The amount in controversy, exclusive of interest and costs, exceeds the sum of seventy five thousand dollars (\$75,000.00).

11. This Court has jurisdiction over the common law claims herein under 28 U.S.C. §1338(b), because those claims are joined with a substantial and related claim under the Trademark Act of 1946, as amended, 15 U.S.C. §§1051 et seq.
12. Venue is proper in this district, pursuant to 28 U.S.C. §1391(a), because the Defendants regularly engage in business in Pennsylvania, Florida and the entire United States.
13. At all times material hereto, Defendants acted by and through their agents, employees and servants.

### **BACKGROUND**

#### ***a) General***

14. Plaintiff Ernest Evans is a legendary musical entertainer known by his stage name, Chubby Checker. Chubby Checker first gained national prominence in 1960, when his recording of "The Twist" rose to #1 on the Billboard Magazine "Hot 100" singles chart, where it remained for 18 straight weeks. In the fall of 1961, Chubby Checker's original recording of "The Twist" reentered the "Hot 100" chart and reclaimed the #1 position by January of 1962. No other record before or since has reclaimed the #1 position after spending a period of time off the charts. Combining its 1960 run with its 1961-62 return, "The Twist" spent nine months total on the "Hot 100" singles charts. In 2008, Chubby Checker's recording of "The Twist" was selected by Billboard Magazine as the #1 all-time song its "Hot 100" chart on the occasion of the 50<sup>th</sup> anniversary of that chart.
15. Not only was "The Twist" the #1 record twice, but Chubby Checker's performance of the song "Dick Clark's American Bandstand" in 1960, and his continued performances of the song in other venues, including the "Ed Sullivan Show" in 1961, inspired an international dance craze in the early 1960's. Fifty year later, Chubby Checker's recording of "The Twist" and the associated dance remains a mainstay of dance parties hosted by DJs playing recorded music.
16. Chubby Checker built upon his initial success with a string of hit recordings including "Let's Twist Again", for which Chubby Checker won the first ever Grammy Award for "Best Rock Performance"

in 1961, and "Pony Time," which hit #1 on the "Hot 100" chart in 1962. In the early 1960s, he was also featured in several movies, including "Twist Around The Clock" in 1961 and "Don't Knock The Twist" in 1962. More recently, he has performed "The Twist" in 2010 episode of ABC's "Dancing on Ice" in the 2009 Rock and Roll Hall of Fame "Feelin' Alright" concert and video, in a 2007 episode of AMC's "Mad Men" and in the 2007 theatrical release "Spider-Man 3."

*b) Trademark and Related Rights of Chubby Checker*

17. On April 21, 1998, the United States Patent and Trademark Office (USPTO) granted to Plaintiff The Ernest Evans Corporation Trademark Registration No. 2, 152, 510 for the mark Chubby Checker for entertainment services, namely, the rendering of entertainment services by way of personal appearances and live musical performances by Ernest Evans. A copy of the '510 registration certificate is attached as **EXHIBIT "A"**. Mr. Evans also holds several United States Patent.
18. On April 12, 2005, the USPTO granted to Plaintiff The Ernest Evans Corporation Trademark Registration No. 2, 939, 351 for the mark CHUBBY CHECKER for musical sound recordings; pre-recorded CDs featuring music; prints, namely photographs and posters; publications, namely, souvenir concert programs, books about music and the artist known as Chubby Checker; entertainment services, namely production of musical recordings, of musical performances, and of other presentations featuring musical performances rendered by a singer; entertainment services, namely providing information relating to musical performances, to Chubby Checker, and to his music via a global computer network; entertainment services, namely providing live musical performances, direction and production of personal musical performances of others; entertainment services, namely, touring productions featuring live musical performances by multiple artists. A copy of the '351 registration certificate is attached as **EXHIBIT "B"**
19. The Chubby Checker name also has been used by one or more of the Plaintiffs as a trademark for food products.



20. On May 16, 2006, the USPTO granted to Plaintiff The Last Twist Inc. Trademark Registration No.

3,093,625 for the mark CHUBBY CHECKER'S for jerky, hot dogs, steaks, lamb chops, pork chops, veal chops, hamburgers, chicken, popped or processed popcorn, candy, chocolate and spring water.

A copy of the '625 registration certificate is attached as **EXHIBIT "C"**.

21. May 16, 2006, the USPTO granted to Plaintiff The Last Twist Inc. Trademark Registration No.

3,093,626 for the design mark Chubby Checker's for jerky, hot dogs, steaks, lamb chops, pork chops, veal chops, hamburgers, chicken, popped or processed popcorn, candy, chocolate and spring water.

A copy of the '626 registration certificate is attached as **EXHIBIT "D"**.

22. On October 21, 2008, the USPTO granted to Plaintiff The Last Twist, Inc. Trademark Registration

No. 3,520,993 for the design mark CHUBBY CHECKER'S NEW YORK TWIST for hot dogs, steaks, lamb chops, pork chops, veal chops and hamburger. A copy of the '993 registration certificate is attached as **EXHIBIT "E"**.

23. On October 21, 2008, the USPTO granted to Plaintiff The Last Twist, Inc. Trademark Registration

No. 3,520, 994 for the design mark CHIUBBY CHECKER 'S SNACKS KING IF THE TWIST FOOD PRODUCTS for jerky, hot dogs, steaks, lamb chops, pork chops, veal chops, hamburgers, chicken, popped or processed popcorn, candy, chocolate and spring water. A copy of the '994 registration certificate is attached as **EXHIBIT "F"**.

24. On July 19, 2005, the USPTO granted to Plaintiff The Last Twist Inc. Trademark Registration No.

2,972,350 for the design mark CHUBBY CHECKER'S GIRL OF THE WORLD for spring water. A copy of the '350 registration certificate is attached as **EXHIBIT "G"**.

*c) The Chubby Checker Application Maintained by HP and Palm*

25. Defendants HP and Palm APP Catalog, a web-based store which sells software applications ("apps")

for downloading to Palm smartphones, such as the PALM ORE and other hand-held computing devices running Palm's operating system(s).

26. The Palm App Catalog offers for sale and/or free download an app named "The Chubby Checker".

The web page for this app states that the app is "FOR ENTERTAINMENT " and enables women to estimate the size of a man's penis based on his shoe size.

27. On information and belief Defendants began offering the app named "The Chubby Checker" in interstate commerce after October 6, 2006.

28. On information and belief, the Defendants had full knowledge of the icon-status of CHUBBY CHECKER when it began offering for sale and/or permitting free download of the app named "The Chubby Checker."

29. None of the Defendants was possessed of the right to use the name and mark CHUBBY CHECKER in connection with any endorsement of a product or service. In addition to Plaintiff's other rights, they are the sole possessors of the right to employ or license rights in the use of the name and mark CHUBBY CHECKER in connection with any endorsement of a product or service.

30. None of the Plaintiffs has ever conferred upon anyone permission to use the name and mark CHUBBY CHECKER in connection with Defendants' commercial enterprise.

31. Purchases of The Chubby Checker app and non-purchasing browsers of the associated webpage are being misled into believing that Plaintiffs have endorsed Defendants' app.

32. Plaintiffs have received no compensation for the unauthorized use of the Chubby Checker name and trademark for The Chubby Checker app.

33. On September 6, 2012 Hewlett Packard Company was notified of the infringement as well as ordered to cease and desist by Plaintiffs. As of the filing of this law suit, the infringement continues.

**EXHIBIT "H".**

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT**

34. Plaintiffs repeat and re-allege each of the allegations contained in paragraphs 1 through 33 as if fully set forth herein.



35. Defendants' use of the name and mark CHUBBY CHECKER in connection with the app named "The Chubby Checker" is likely to cause confusion, deception or mistake, all to the damage of Plaintiffs, and is an infringement of Plaintiffs' The Last Twist, Inc. and The Ernest Evans Corporation above-identified federally registered marks in violation of 15 U.S.C. § 1114(1), §32(1) of the Trademark Act of 1946, as amended.
36. Defendants' infringing acts, if allowed to continue, will cause serious damage to Plaintiffs' business, goodwill and profit and will permit Defendants to enjoy profits to which it otherwise is not entitled.
37. Plaintiffs have sustained irreparable injury and unless Defendants are enjoined and restrained by this Court, Defendants will continue in the activities herein alleged and as a result thereof, Plaintiffs will continue to sustain irreparable injury because of Defendants' infringement of Plaintiff's The Last Twist, Inc. and The Ernest Evans Corporation marks.

## COUNT II

### FEDERAL TRADEMARK DILUTION

38. Plaintiffs repeat and re-allege each of the allegations contained in paragraphs 1 through 37, as if fully set forth herein.
39. Defendants' use in interstate commerce of the name and mark *CHUBBY CHECKER* is a violation of the Federal Trademark Dilution Act of 1995, as amended in 2006, 15 U.S.C. 1125(c).
40. Plaintiffs' marks employing CHUBBY CHECKER in them are distinctive and famous marks These latter marks are inherently strong and distinctive, have long been used in connection with the goods and services on which they appear, have long been the subject of substantial advertising and promotion, have long been used and advertised throughout the United States, are widely recognized by consumers and those in the trade, are in substantially exclusive use, and are federally registered, as alleged above. The unlawful acts of Defendant alleged herein were commenced and committed from a time after Plaintiffs' marks became famous.

41. Defendants' use of the name CHUBBY CHECKER in its app is likely to associate Plaintiffs' marks with the obscene, sexual connotation and images evoked by Defendants' app "The Chubby Checker," which is being exploited in interstate commerce on the World Wide Web, thereby blurring and tarnishing Plaintiffs' marks employing CHUBBY CHECKER and the goodwill associated therewith. This blurring and tarnishing dilutes the distinctive quality of Plaintiffs' marks employing CHUBBY CHECKER in them and will diminish and destroy the positive associations the public has of the CHUBBY CHECKER name and mark in violation of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).
42. Use of the name and mark *CHUBBY CHECKER* by Defendants has caused and will continue to cause the tarnishment and blurring of the distinctive quality of Plaintiffs' famous CHUBBY CHECKER marks, all to the irreparable injury to and damage of the Plaintiffs.
43. Upon information and belief, Defendant willfully intended to trade on Plaintiffs' reputation and to cause dilution of Plaintiff's famous name and marks by adopting and using the name and mark *CHUBBY CHECKER* in its app.
44. Plaintiffs have sustained irreparable injury, including financial injury and lost profits, and unless Defendants are enjoined, Plaintiffs will continue to sustain irreparable injury as a result of Defendants' willful conduct in violation of the Federal Trademark Dilution Act of 1995, as amended in 2006, 15 U.S.C. 1125(c).

**COUNT III**  
**FEDERAL UNFAIR COMPETITION**

45. Plaintiffs repeat and re-allege each of the allegations contained in paragraphs 1 through 44, as if fully set forth herein.
46. Plaintiffs' marks employing CHUBBY CHECKER in them have become uniquely associated with and thus identify only Plaintiffs. Defendants have caused its app to enter into interstate commerce with the designation "The Chubby Checker" connected therewith. This use of *THE CHUBBY*

*CHECKER* is a false designation of origin which is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association of Defendants with Plaintiffs and as to the origin, sponsorship or approval of such goods by Plaintiffs.

47. The aforesaid acts, are in violation of §43(a) of the Trademark Act of 1946, as amended, 15 U.S.C. §1125(a), in that Defendants have used in connection with its goods and services a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association of Defendants with Plaintiffs and as to the origin, sponsorship, and approval of Defendants' goods and commercial activities by Plaintiffs.

**COUNT IV**  
**COMMON LAW UNFAIR COMPETITION**

48. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs 1 through 47, as if fully set forth herein.
49. By virtue of Defendants' acts, hereinabove pleaded, Defendants have engaged in unfair competition with Plaintiffs, in violation of the common law of Pennsylvania.
50. The Defendants' offering of goods under the name and mark *THE CHUBBY CHECKER* was calculated to deceive consumers and to cause consumers to believe that Defendants' goods are connected with, or sponsored by Plaintiffs.
51. Defendants' acts are being committed with the intent, purpose and effect of procuring an unfair competitive advantage by misappropriating the valuable goodwill developed by Plaintiffs at substantial effort and expense, and represented by the distinctiveness of Plaintiff's name and marks employing CHUBBY CHECKER.
52. By copying the distinctiveness of Plaintiffs' CHUBBY CHECKER name and marks, the public and consumers will be deceived as to the source and sponsorship of Defendant' goods and Defendants will obtain business it could not otherwise obtain fairly on the open market.

53. Defendants' copying the distinctiveness of Plaintiff's name CHUBBY CHECKER and the marks employing same will adversely affect Plaintiffs' ability to control its good reputation.

54. Upon information and belief, Defendants will continue to compete unfairly with Plaintiffs unless restrained by this Court. As a result of Defendants' unfair competition, Plaintiff will incur substantial damage to its business, reputation and goodwill, and will sustain still further damage in an amount difficult to ascertain.

#### **COUNT V**

##### **COMMON LAW TRADEMARK INFRINGEMENT**

55. Plaintiffs repeat and re-allege each of the allegations contained in paragraphs 1 through 54, as if fully set forth herein.

56. Defendants' use of the name and mark CUBBY CHECKER constitutes trademark infringement of Plaintiffs' CHUBBY CHECKER marks and causes likelihood of confusion, deception and mistake, and causes the purchasing public and the trade to think that Defendants' goods are in some way sponsored, connected, owned or otherwise associated with Plaintiffs, in violation of the common law of Pennsylvania.

57. As a result of Defendants' use of the name and mark *CHUBBY CHECKER* Plaintiffs' reputation and goodwill have been and will be damaged, and Defendants have wrongfully profited from its imitation and infringement of Plaintiffs' CHUBBY CHECKER marks.

58. Unless restrained by this Court, Defendants will continue in the activities herein alleged and as a result thereof, Plaintiffs will suffer injury for which there is no adequate remedy at law.

#### **COUNT VI**

##### **UNAUTHORIZED USE OF NAME OR LIKENESS (42 Pa.C.S. §8316)**

59. Plaintiffs incorporate the averments of paragraphs 1 through 58 as if each was fully set forth herein.

60. Plaintiff Ernest Evans (hereafter "Chubby Checker") is authorized to bring this action pursuant to 42 Pa.C.S. §8316.

61. The distinctive and famous name of Chubby Checker has significant commercial value, which has

been developed by over fifty (50) years of continuous use and advertisement.

62. Defendants have unlawfully misappropriated and used the Chubby Checker name in the above-identified app being offered for sale and/or download by Defendants without the consent of Plaintiffs, for commercial and advertising purposes.
63. As a result of Defendants' unauthorized use of the Chubby Checker name, Plaintiff Chubby Checker has sustained loss or injury including, but not limited to, depreciation of the value of the Chubby Checker name in connection with future commercial pursuits, and loss of the compensation which would otherwise have been due to Chubby Checker in connection with the products and services being provided under names or terms employing "Chubby Checker" in them. Moreover, the Defendants realized significant value and benefits by employing the name Chubby Checker in the product being offered for sale and/or download on the world wide web.
64. Additionally, the Defendants had actual knowledge that they were using the Chubby Checker name without any right, license or permission in connection with the app being offered for sale and/or download on the world wide web. Accordingly, Defendants knowingly misappropriated the Chubby Checker name in disregard for the rights and interests of Chubby Checker in his name.
65. Defendants knowing misappropriation of the Chubby Checker name demonstrates flagrant disregard for Chubby Checker's interests therein warrants the imposition of punitive damages against Defendants.
66. Plaintiff Chubby Checker, on behalf of himself and the other Plaintiffs in this action, seeks damages for all injuries, damages and losses resulting from Defendants' misappropriation of the Chubby Checker name, as set forth in detail earlier in this Complaint, including, but not limited to damages for the fair market value of the Chubby Checker name and damages for goodwill, said damages including the amount that the Chubby Checker name was deemed to have been worth to the Defendants and the diminution of value of the name Chubby Checker in

connection with future commercial pursuits by Plaintiffs.

**WHEREFORE**, Plaintiffs pray for relief against Defendants as follows:

1. Defendants, its agents, servants, employees, attorneys, parents and subsidiaries, related companies, and all persons acting for, with, by, through or under it, and each of them, shall be immediately and preliminarily enjoined and restrained during the pendency of this action, and thereafter permanently enjoined and restrained from:
  - a. Using the name CHUBBY CHECKER or any name, term or mark similar thereto or any confusingly similar designation alone or in combination with other terms, as a trademark, trade name component or otherwise, as a domain name, directory name, or other such computer addresses, and as the name of Defendants' web sites, to market, advertise or identify Defendants' goods and services;
  - b. Otherwise infringing Plaintiffs' marks employing the name Chubby Checker therein;
  - c. Unfairly competing with Plaintiffs in any manner whatsoever; and
  - d. Causing likelihood of confusion, injury to Plaintiff's business reputation, or dilution of the distinctive quality, trademarks, family of trademarks and or trade dress by any unauthorized use of the same.
2. Defendants shall immediately cease using and claiming any rights whatsoever, in any term or mark including the name Chubby Checker or names similar thereto.
3. Defendants be required to deliver up and destroy all devices, computer hardware and software, files, menus, hard drives, servers, diskettes and backups, literature, advertisements, packages, labels, signs, prints, wrappers, receptacles, and all other materials and products in the possession of Defendants bearing the name and/or mark CHUBBY CHECKER in them, and all plates, molds, matrices and other means of making the same.
4. Defendants be ordered to notify in writing and direct to its Internet Service Provider(s), Web



Host(s) and all publishers of directories or lists, including Internet search engines, in which the Defendants' use of the names and marks employing CHUBBY CHECKER appear, to delete all references to said names and marks from their public databases, search engine directories, directory assistance and from all future directories in which said names and marks are to appear, and to delete all forwarding or "cache memory" or storage mechanisms referencing names and marks employing CHUBBY CHECKER.

5. Defendants be ordered to file with the Court and serve upon Plaintiffs' counsel within thirty (30) days after entry of Judgment a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the requirements of the Injunction and Order.
6. Defendants be required to account for and pay over to Plaintiffs all damages sustained by Plaintiffs by reason of Defendants' unlawful acts alleged herein, plus interest thereon, and that such damages be trebled, as provided by law.
7. Defendants be required to account for and pay over to Plaintiffs all profits realized by Defendants by reason of its unlawful acts alleged herein, and that such amounts be trebled, as provided by law.
8. Defendants be required to pay Plaintiffs punitive damages as may be permitted by law or in the discretion of this Court.
9. Plaintiffs have and recover its reasonable attorneys' fees incurred in this litigation.
10. Plaintiffs have and recover its taxable costs and disbursements herein.
11. Plaintiffs have such other and further relief as the Court may deem just and appropriate.

#### **DEMAND FOR JURY TRIAL**

**WHEREFORE**, Plaintiff prays for relief against Defendants and requests a jury trial for all issues so triable.

Dated: February 11, 2013.

Respectfully submitted,

**GARY, WILLIAMS, PARENTI, WATSON & GARY, P.L**

221 E. Osceola Street

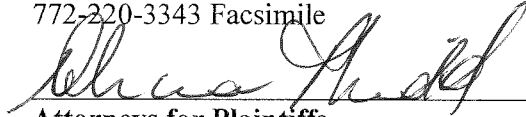
Stuart, FL 34994

weg@williegary.com Email

aphidd@williegary.com Email

772-283-8260 Telephone

772-220-3343 Facsimile



**Attorneys for Plaintiffs**

Willie E. Gary, Esq. (FBN: 187843)

Alicia M. Phidd, Esq. (FBN: 0177814)

---

**Chubby Checker Complaint**

Gary, Williams, Parenti, Watson & Gary, P.L. \*221 S.E. Osceola Street\* Stuart, Florida 34994

\*weg@williegary.com & aphidd@williegary.com



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

<a href="#">TESS HOME</a>	<a href="#">NEW USER</a>	<a href="#">STRUCTURED</a>	<a href="#">FREE FORM</a>	<a href="#">BROWSE DICT</a>	<a href="#">SEARCH OG</a>	<a href="#">BOTTOM</a>	<a href="#">HELP</a>	<a href="#">PREV LIST</a>	<a href="#">CURR LIST</a>
<a href="#">NEXT LIST</a>	<a href="#">FIRST DOC</a>	<a href="#">PREV DOC</a>	<a href="#">NEXT DOC</a>	<a href="#">LAST DOC</a>					

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At:  OR [Jump](#) to record:  **Record 6 out of 6**

<a href="#">TSDR</a>	<a href="#">ASSIGN Status</a>	<a href="#">TTAB Status</a>
----------------------	-------------------------------	-----------------------------

 ( Use the "Back" button of the Internet Browser to return to TESS)
**Typed Drawing****Word Mark** CHUBBY CHECKER
**Goods and Services** IC 041. US 100 101 107. G & S: entertainment services, namely, the rendering of entertainment services by way of personal appearances and live musical performances by Ernest Evans. FIRST USE: 19530000. FIRST USE IN COMMERCE: 19590000

**Mark**  
**Drawing** (1) TYPED DRAWING  
**Code**
**Serial**  
**Number** 75293095

**Filing Date** May 16, 1997

**Current**  
**Basis** 1A

**Original**  
**Filing Basis** 1A

**Published**  
**for** December 30, 1997  
**Opposition**
**Registration**  
**Number** 2152510

**Registration**  
**Date** April 21, 1998

**Owner** (REGISTRANT) Ernest Evans Corporation, The CORPORATION PENNSYLVANIA 320 FAYETTE STREET CONSHOHOCKEN PENNSYLVANIA 19428

**Attorney of**  
**Record** Charles Gorenstein

**Type of**  
**SERVICE MARK**


Mark

Register PRINCIPAL

Affidavit  
Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20071128.

Renewal 1ST RENEWAL 20071128

Other Data The name CHUBBY CHECKER is the applicant's stage name.

Live/Dead  
Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Int. Cls.: 9, 16 and 41

Prior U.S. Cls.: 2, 5, 21, 22, 23, 26, 29, 36, 37, 38, 50,  
100, 101 and 107

**United States Patent and Trademark Office**

Reg. No. 2,939,351  
Registered Apr. 12, 2005

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**CHUBBY CHECKER**

THE ERNEST EVANS CORPORATION (PENN-  
SYLVANIA CORPORATION)  
320 FAYETTE STREET  
CONSHOHOCKEN, PA 19428

FOR: MUSICAL SOUND RECORDINGS; PRE-  
RECORDED CD'S FEATURING MUSIC, IN CLASS  
9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 0-0-1959; IN COMMERCE 0-0-1959.

FOR: PRINTS, NAMELY PHOTOGRAPHS AND  
POSTERS, AND PUBLICATIONS, NAMELY, SOU-  
VENIR CONCERT PROGRAMS, AND BOOKS  
ABOUT MUSIC AND THE ARTIST KNOWN AS  
CHUBBY CHECKER, IN CLASS 16 (U.S. CLS. 2, 5, 22,  
23, 29, 37, 38 AND 50).

FIRST USE 0-0-1959; IN COMMERCE 0-0-1959.

FOR: ENTERTAINMENT SERVICES, NAMELY  
PRODUCTION OF MUSICAL RECORDINGS, OF  
MUSICAL PERFORMANCES, AND OF OTHER  
PRESENTATIONS FEATURING MUSICAL PER-  
FORMANCES RENDERED BY A SINGER; ENTER-

TAINMENT SERVICES, NAMELY PROVIDING  
INFORMATION RELATING TO MUSICAL PER-  
FORMANCES, TO CHUBBY CHECKER, AND TO  
HIS MUSIC VIA A GLOBAL COMPUTER NET-  
WORK; ENTERTAINMENT SERVICES, NAMELY  
PROVIDING LIVE MUSICAL PERFORMANCES,  
DIRECTION AND PRODUCTION OF PERSONAL  
MUSICAL PERFORMANCES OF OTHERS; ENTER-  
TAINMENT SERVICES, NAMELY, TOURING PRO-  
DUCTIONS FEATURING LIVE MUSICAL  
PERFORMANCES BY MULTIPLE ARTISTS, IN  
CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 0-0-1959; IN COMMERCE 0-0-1959.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,152,510.

SER. NO. 76-567,763, FILED 12-30-2003.

BRENDAN REGAN, EXAMINING ATTORNEY

PLAINTIFF'S  
EXHIBIT

B



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

 Please logout when you are done to release system resources allocated for you.

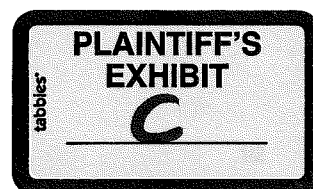
 List At:  OR  to record:  **Record 2 out of 6**

TSDR	ASSIGN Status	TTAB Status
------	---------------	-------------

*( Use the "Back" button of the Internet Browser to return to TESS)*

# CHUBBY CHECKER'S

<b>Word Mark</b>	CHUBBY CHECKER'S
<b>Goods and Services</b>	IC 029. US 046. G & S: jerky; hot dogs, steaks, lamb chops, pork chops, veal chops, hamburgers, chicken. FIRST USE: 20030408. FIRST USE IN COMMERCE: 20030408  IC 030. US 046. G & S: popped or processed popcorn; candy, chocolate. FIRST USE: 20040611. FIRST USE IN COMMERCE: 20040611  IC 032. US 045 046 048. G & S: spring water. FIRST USE: 20040601. FIRST USE IN COMMERCE: 20040601
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	76567764
<b>Filing Date</b>	December 30, 2003
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A;1B
<b>Published for Opposition</b>	May 24, 2005
<b>Registration</b>	3093625





Number  
Registration Date May 16, 2006  
Owner (REGISTRANT) The Last Twist, Inc. CORPORATION PENNSYLVANIA 320 Fayette Street, 2nd Floor Conshohocken PENNSYLVANIA 19428  
Attorney of Record Charles Gorenstein  
Prior Registrations 2823034  
Type of Mark TRADEMARK  
Register PRINCIPAL  
Affidavit Text SECT 15. SECT 8 (6-YR).  
Other Data The name Chubby Checker identifies a living individual whose consent is of record.  
Live/Dead Indicator LIVE

---

<a href="#">TESS HOME</a>	<a href="#">NEW USER</a>	<a href="#">STRUCTURED</a>	<a href="#">FREE FORM</a>	<a href="#">BROWSE DICT</a>	<a href="#">SEARCH OG</a>	<a href="#">TOP</a>	<a href="#">HELP</a>	<a href="#">PREV LIST</a>	<a href="#">CURR LIST</a>
<a href="#">NEXT LIST</a>	<a href="#">FIRST DOC</a>	<a href="#">PREV DOC</a>	<a href="#">NEXT DOC</a>	<a href="#">LAST DOC</a>					

---

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



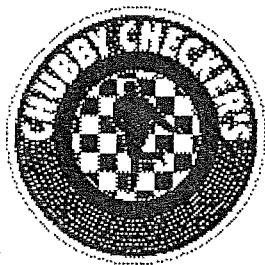
United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

## Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)  
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)
[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At:  OR [Jump](#) to record:  **Record 1 out of 6**
[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)
**Word Mark** CHUBBY CHECKER'S
**Goods and Services** IC 029. US 046. G & S: Jerky; Hot dogs, steaks, lamb chops, pork chops, veal chops, hamburgers, chicken. FIRST USE: 20030408. FIRST USE IN COMMERCE: 20030408

IC 030. US 046. G &amp; S: Popped or processed popcorn; Candy, chocolate. FIRST USE: 20040601. FIRST USE IN COMMERCE: 20040601

IC 032. US 045 046 048. G &amp; S: Spring water. FIRST USE: 20040601. FIRST USE IN COMMERCE: 20040601

**Mark**  
**Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

**Design** 02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men  
**Search Code** 02.09.14 - Dancing, humans; Humans, including men, women and children, depicted dancing  
 25.03.01 - Checker board pattern; Checkerboard patterns  
 26.01.02 - Circles, plain single line; Plain single line circles  
 26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle  
 26.01.11 - Circles comprised of animals; Circles comprised of geometric figures; Circles comprised of humans; Circles comprised of letters or numerals; Circles comprised of plants; Circles comprised of punctuation; Letters, numerals, punctuation, geometric figures, objects, humans, plants or animals comprising a circle  
 26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles


26.01.21 - Circles that are totally or partially shaded.

**Serial Number** 76567767

**Filing Date** December 30, 2003

**Current Basis** 1A

**Original Filing Basis** 1A;1B

**Published for Opposition** May 24, 2005

**Registration Number** 3093626

**Registration Date** May 16, 2006

**Owner** (REGISTRANT) The Last Twist, Inc. CORPORATION PENNSYLVANIA 320 Fayette Street, 2nd Floor  
Conshohocken PENNSYLVANIA 19428

**Attorney of Record** Charles Gorenstein

**Prior Registrations** 2823034

**Description of Mark** Color is not claimed as a feature of the mark.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECT 8 (6-YR).

**Other Data** The name Chubby Checker identifies a living individual whose consent is of record.

**Live/Dead Indicator** LIVE

<a href="#">TESS HOME</a>	<a href="#">NEW USER</a>	<a href="#">STRUCTURED</a>	<a href="#">FREE FORM</a>	<a href="#">BROWSE DICT</a>	<a href="#">SEARCH OG</a>	<a href="#">TOP</a>	<a href="#">HELP</a>	<a href="#">PREV LIST</a>	<a href="#">CURR LIST</a>
<a href="#">NEXT LIST</a>	<a href="#">FIRST DOC</a>	<a href="#">PREV DOC</a>	<a href="#">NEXT DOC</a>	<a href="#">LAST DOC</a>					

[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

## Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)  
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At:  OR [Jump](#) to record:  **Record 3 out of 6**

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)



**Word Mark** CHUBBY CHECKER'S SNACKS KING OF THE TWIST FOOD PRODUCTS  
**Goods and Services** IC 029. US 046. G & S: jerky; hot dogs, steaks, lamb chops, pork chops, veal chops, hamburger, chicken. FIRST USE: 20031031. FIRST USE IN COMMERCE: 20031031  
 IC 030. US 046. G & S: popped or processed popcorn, candy, chocolate. FIRST USE: 20031031. FIRST USE IN COMMERCE: 20031031  
 IC 032. US 045 046 048. G & S: SPRING WATER. FIRST USE: 20031031. FIRST USE IN COMMERCE: 20031031  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men  
 24.09.04 - Checkered flag; Flags, checkered  
 26.01.06 - Circles, semi; Semi-circles  
 26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle  
 26.01.12 - Circles with bars, bands and lines  
 26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles  
 26.01.21 - Circles that are totally or partially shaded.  
**Trademark Search Facility Classification Code** ART-24.09 Flags, banners  
 CHECKERS Checkerboard patterns within a design  
 HUM Accurate representation of a human form, or any portion of a human form  
 NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters, punctuation and



mathematical signs, zodiac signs, prescription marks  
 SHAPES-BAR-BANDS Designs with bar, bands or lines  
 SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles

**Serial Number** 76567785  
**Filing Date** December 30, 2003  
**Current Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** May 24, 2005  
**Registration Number** 3520994  
**Registration Date** October 21, 2008  
**Owner** (REGISTRANT) The Last Twist, Inc. CORPORATION PENNSYLVANIA 320 Fayette Street, 2nd Floor Conshohocken PENNSYLVANIA 19428  
**Attorney of Record** Charles Gorenstein (Reg. No. 29,271), James M. Slattery (Reg. No. 28,380), Michael K. Mutter (Reg. No. 29,680), Robert J. Kenney, Paul C. Lewis (Reg. No. 43,368), Terrell C. Birch (Reg. No. 19,382), Raymond C. Stewart (Reg. No. 21,066), Joseph A. Kolasch (Reg. No. 22,463) and Leonard R. Svensson (Reg. No. 30,330).  
**Prior Registrations** 2823034  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SNACKS" and "FOOD PRODUCTS" APART FROM THE MARK AS SHOWN  
**Description of Mark** Color is not claimed as a feature of the mark.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)





United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

## Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)  
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At:  OR [Jump](#) to record:  **Record 4 out of 6**

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	CHUBBY CHECKER'S NEW YORK TWIST
Goods and Services	IC 029. US 046. G & S: Hot dogs, steaks, lamb chops, pork chops, veal chops, hamburger. FIRST USE: 20020531. FIRST USE IN COMMERCE: 20020531
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	02.01.02 - Men depicted as shadows or silhouettes of men; Silhouettes of men 02.01.33 - Grotesque men formed by letters, numbers, punctuation or geometric shapes; Stick figures 02.09.14 - Dancing, humans; Humans, including men, women and children, depicted dancing 25.03.01 - Checker board pattern; Checkerboard patterns 26.01.02 - Circles, plain single line; Plain single line circles 26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle 26.01.11 - Circles comprised of animals; Circles comprised of geometric figures; Circles comprised of humans; Circles comprised of letters or numerals; Circles comprised of plants; Circles comprised of punctuation; Letters, numerals, punctuation, geometric figures, objects, humans, plants or animals comprising a circle 26.01.12 - Circles with bars, bands and lines 26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles 26.01.21 - Circles that are totally or partially shaded. 26.09.02 - Plain single line squares; Squares, plain single line 26.09.14 - Squares, three or more; Three or more squares 26.09.16 - Squares touching or intersecting





26.09.21 - Squares that are completely or partially shaded

**Trademark** CHECKERS Checkerboard patterns within a design

**Search Facility** HUM Accurate representation of a human form, or any portion of a human form

**Classification Code** NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks  
 SHAPES-BAR-BANDS Designs with bar, bands or lines  
 SHAPES-CIRCLE Circle figures or designs including semi-circles and incomplete circles  
 SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons

**Serial Number** 76567762

**Filing Date** December 30, 2003

**Current Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** May 24, 2005

**Registration Number** 3520993

**Registration Date** October 21, 2008

**Owner** (REGISTRANT) The Last Twist, Inc. CORPORATION PENNSYLVANIA 320 Fayette Street, 2nd Floor Conshohocken PENNSYLVANIA 19428

**Attorney of Record** Charles Gorenstein (Reg. No. 29,271), James M. Slattery (Reg. No. 28,380), Michael K. Mutter (Reg. No. 29,680), Robert J. Kenney, Paul C. Lewis (Reg. No. 43,368), Terrell C. Birch (Reg. No. 19,382), Raymond C. Stewart (Reg. No. 21,066), Joseph A. Kolasch (Reg. No. 22,463) and Leonard R. Svensson (Reg. No. 30,330).

**Prior Registrations** 2823034

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "New York" APART FROM THE MARK AS SHOWN

**Description of Mark** Color is not claimed as a feature of the mark.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Other Data** The name "Chubby Checker" identifies a living individual whose consent is of record.

**Live/Dead Indicator** LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

## Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 11 05:02:46 EST 2013

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#) [PREV LIST](#) [CURR LIST](#)  
[NEXT LIST](#) [FIRST DOC](#) [PREV DOC](#) [NEXT DOC](#) [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) List At:  OR [Jump](#) to record:  **Record 5 out of 6**

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)



**Word Mark** CHUBBY CHECKER'S GIRL OF THE WORLD  
**Goods and Services** IC 032. US 045 046 048. G & S: spring water. FIRST USE: 20040601. FIRST USE IN COMMERCE: 20040601  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design** 02.03.16 - Hats (women wearing); Women wearing hats  
**Search Code** 02.03.22 - Busts of women in profile; Heads of women in profile; Portraiture of women in profile; Women - head, portraiture or busts in profile  
02.03.24 - Women, stylized, including women depicted in caricature form  
05.05.25 - Daffodils; Iris (flower); Other flowers  
07.03.05 - Windmills; Windmills  
26.01.08 - Circles having letters or numerals as a border; Circles having punctuation as a border; Letters, numerals or punctuation forming or bordering the perimeter of a circle  
26.01.12 - Circles with bars, bands and lines  
26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles  
26.01.21 - Circles that are totally or partially shaded.  
26.13.21 - Quadrilaterals that are completely or partially shaded  
26.13.25 - Quadrilaterals with one or more curved sides  
**Serial Number** 76558452  
**Filing Date** November 10, 2003



Current Basis 1A  
Original Filing Basis 1B  
Published for Opposition July 27, 2004  
Registration Number 2972350  
Registration Date July 19, 2005  
Owner (REGISTRANT) The Last Twist, Inc. CORPORATION PENNSYLVANIA 320 Fayette Street, 2nd Floor  
Conshohocken PENNSYLVANIA 19428  
Attorney of Record Charles Gorenstein (Reg. No. 29,271)  
Type of Mark TRADEMARK  
Register PRINCIPAL  
Affidavit Text SECT 15. SECT 8 (6-YR).  
Other Data The name "Chubby Checker" identifies a living individual whose consent is of record. The individual depicted in the mark is "Catharina Lidders", whose consent is of record.  
Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

**GARY, WILLIAMS,  
LEWIS & WATSON, P.L.**

ATTORNEYS AND COUNSELORS AT LAW

WATERSIDE PROFESSIONAL BUILDING  
221 S.E. OSCEOLA STREET  
STUART, FL. 34994

(772) 283-8260  
FAX NO. (772) 220-3343  
1-800-329-4279



W. E. GARY PROFESSIONAL CENTER  
320 S. INDIAN RIVER DRIVE  
POST OFFICE BOX 3390  
FT. PIERCE, FLORIDA 34948-3390

(772) 464-2352  
FAX NO. (772) 464-4226  
1-800-330-2832

PLEASE REPLY TO:

**STUART OFFICE**

*Sent via Certified Mail, Return Receipt*

September 6, 2012

Hewlett Packard Company  
Registered Agent  
Corporation Trust Company  
1209 Orange Street  
Wilmington, Delaware 19801

**Re: Cease and Desist  
Infringement of Chubby Checker Copyrights and Trademarks**

Dear Sir/Madam:

Please be advised that the undersigned law firm represents Mr. Ernest O. Evans and the Chubby Checker's enterprises. This is to notify you that Mr. Evans, The Last Twist, Inc. and The Ernest Evans Corporation are the owners of the trademark and copyright of "Chubby Checker".

It has recently come to our attention that you have an app on your electronic devices and specifically the telephonic mobile device, named Chubby Checker which is not in line with the image of our clients. Furthermore, no license and or permission were sought from our clients nor were any given by our clients.

We hereby mandate that you cease and desist from this action immediately. We are herewith making demand that you confirm to us in writing within ten (10) days of receipt of this letter the following:

- a) That Hewlett Packard has removed from all its devices all apps and images for Chubby Checker; and

ALSO ADMITTED:

\*\* D.C. Bar  
+ MI Bar  
♦ TN Bar  
■■■ GA Bar

**PLAINTIFF'S  
EXHIBIT**

**H**

Hewlett Packard Company  
Registered Agent  
September 6, 2012  
Page 2

- b) That Hewlett Packard will refrain from having such app on all or any of its electronic devices.
- c) That Hewlett Packard provide to us the number of units sold with the app; and
- d) How many downloads were sold to date.

The foregoing is without waiver of any and all rights of our clients including the demand for all damages resulting from this misconduct.

Please contact the undersigned at your earliest convenience to discuss and resolve this matter.

Sincerely,  
GARY, WILLIAMS, LEWIS & WATSON, P.L.

A handwritten signature in cursive script, appearing to read 'Alicia Phidd', written in black ink.

Alicia Phidd, Esquire  
For the Firm

Cc: Clients (via email)